BOARD OF PATENT APPEALS AND INTERFERENCES
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants	:	Stephen M. Drummond, *et. al.*		
Application No.	:	10/824,954	Confirmation No. :	7464
Filed	:	January 29, 2004		
For	:	SYSTEMS AND METHODS FOR TRADING EMISSION REDUCTION BENEFITS		
Group Art Unit	:	3689		
Examiner	:	Heidi M. Riviere		

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

REPLY BRIEF UNDER 37 C.F.R. § 41.4

Sir:

This is a reply to the Examiner's Answer dated December 24, 2009 ("Examiner's Answer") that was submitted in response to Applicants' appeal brief of September 17, 2009 ("Appeal Brief").

Although no fee is believed due, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Deposit Account No. 50-3938.

1. STATUS OF CLAIMS

The following claims are pending and stand rejected in the present application:

- Independent claim **13**.
- Dependent claims **14, 15, 20, 21** and **49**.

All the pending claims are being appealed.

The following claims were previously cancelled:

- Claims **1-12, 16-19** and **22-48.**

2. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to be reviewed on appeal are whether:

- Independent claim **13** and dependent claims **14, 15, 20, 21** and **49** are unpatentable under 35 U.S.C. §103(a) over U.S. Publication No. 2002/0143693 (hereinafter "Soestbergen") in view of U.S. Publication No. 2004/0088179 (hereinafter "Cogen").

3. ARGUMENT

Applicants maintain all relevant arguments presented in the Appeal Brief. Unless otherwise explicitly specified, Applicants do not agree with any statements made in the Examiner's Answer, nor do Applicants surrender any arguments made in the Appeal Brief. Applicants' arguments in the Appeal Brief are supplemented with the following.

3.1 Examiner Still Fails to Establish a *Prima Facie* Case of Obviousness for Claims 13-15, 20, 21 and 49.

As discussed in the Appeal Brief, the cited-portions of Soestbergen and Cogen fail to teach or suggest providing a buyer with "*an emission retirement guarantee*" that "*prevents the purchased amount of emission reduction benefit from being repurchased*" as recited in independent claim **13** (emphasis added). Appeal Brief, p. 14-15.

In response to the Appeal Brief, the Examiner argues the following:

> Furthermore, paragraph 76 [of Cogen] states '*The purchasers may obtain MPUs from the system 10 with confidence that the [verified emission reductions] qualifying for inclusion in the system are of a sufficient quality.*' The term "confidence…qualifying for inclusion…sufficient quality" shows that there is a presumed guarantee that the credits are adequate [sic] alerting that it is safe for purchasing and keeping unqualified items out of the portfolio.

Examiner's Answer, p. 9.

The Examiner's argument is flawed on several grounds. First, the Examiner's recitation of paragraph 76 is incomplete-- she omits important language from paragraph 76. In its entirety, paragraph 76 of Cogen recites the following:

> Likewise, the system 10 may provide specific benefits to purchasers participating in the system. The MPUs may ***provide the***

> ***buyer with a source of high quality emission reduction credits.*** The purchasers may obtain MPUs from the system 10 with the confidence that the VERs underlying the MPUs have been assessed by third party experts. The assessment criteria may ensure that the VERs qualifying for inclusion in the system are of ***a sufficiently high quality to merit the premium price commanded by a MPU.***

Cogen, paragraph 76 (emphasis added).

Paragraph 76 of Cogen merely states that the criterion for determining whether a VER qualifies for inclusion in the system is whether it is of "*a sufficiently high quality to merit the premium price commanded by a MPU*" (emphasis added). No details are provided, whatsoever, as to what is considered a "sufficiently high quality," or what are the benchmarks for determining a "sufficiently high quality" of a VER.

The Examiner, however, makes an impermissible logical leap that the "sufficiently high quality" described in Cogen is tantamount to a guarantee that "*prevents the purchased amount of emission reduction benefit from being repurchased*," as recited in claim **13**. The two are not the same. There could be any number of factors involved in deciding whether a VER has a sufficiently high quality for inclusion in a system. The Examiner cannot make such a presumption without further evidence.

In fact, the Examiner even admits her presumption, by stating that the cited-portion of Cogen provides merely "a ***presumed*** guarantee." Examiner's Answer, p. 9 (emphasis added). A mere presumption is insufficient for overcoming the *prima facie* burden of obviousness. There must be some ***actual*** evidence in the record that teaches a guarantee that "*prevents the*

purchased amount of emission reduction benefit from being repurchased," as recited by claim **13**.

Since the Examiner is unable to provide any ***actual*** evidence supporting her argument, Applicants maintain that the Examiner fails to establish a *prima facie* case of obviousness for independent claim **13**. For at least this reason, no *prima facie* case of obviousness has been established for claims **14, 15, 20, 21** and **49**, which depend from claim **13**.

3.2 Conclusion

In view of the foregoing, Appellants submit that all of the pending claims are in proper condition for allowance, and the Board is respectfully requested to overturn the Examiner's rejection of these claims.

Respectfully submitted,

February 24, 2010
Date

____/Ruth J. Ma/_____
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